

July 11, 1988

## REPORT TO THE COMMITTEE ON TRANSPORTATION AND LAND USE ILLEGAL GRADING AND FILLING IN THE TIJUANA RIVER VALLEY

At the Transportation and Land Use Committee meeting of May 9, 1988, the Committee requested the City Attorney to report on whether existing laws were adequate to deter the widespread illegal grading and filling activity in the Tijuana River Valley. The Committee also requested that an action plan be created by the City Manager which would: 1) aggressively enforce grading and land development violations; and 2) be cost effective.

The City Manager has submitted a recent report to this Committee outlining a proposed action plan to effectively enforce land development violations. Therefore, this report will address only the issue of whether existing laws are adequate to deter land use violations.

The governing Municipal Code section for illegal grading and land fill violations is San Diego Municipal Code section 62.0402.1. This section requires a land development permit for any grading and filling activity. It is important to note that there are other existing regulations enforced by the Planning Department which involve illegal grading. One such regulation is the Hillside Review ordinance contained in San Diego Municipal Code section 101.0454. This section requires that a Hillside Review permit be obtained prior to excavating or grading any lot or premises in the Hillside Review Overlay Zone. The new REPOZ ordinance dealing with the regulation and protection of sensitive lands is another area where civil penalties would be beneficial in deterring violations.

As with all violations of the Municipal Code, the available methods by which to proceed against violators of grading and landfill regulations are: 1) administrative abatement per San Diego Municipal Code sections 11.16 and 101.0213;

2) criminal enforcement through misdemeanor prosecution per San Diego Municipal Code section 11.12; and 3) civil litigation through a court action per San Diego Municipal Code section 11.17.

The above methods of enforcement do not necessarily deter illegal grading and land development violations as they do not provide for stiff fines or penalties against business violators. If the violation is continuing, the City Attorney can obtain a

temporary restraining order to cease and desist. Once a complete case report and declarations are received from City departments, an order authorizing abatement may be obtained. Usually no fines are imposed on the violator. Misdemeanor prosecutions of violations per San Diego Municipal Code section 11.12 are punishable by a maximum fine of one thousand dollars (\$1,000) and/or a six (6) month jail sentence per violation but to a violator who is a company with considerable assets, a fine of one thousand dollars (\$1,000) is not an effective deterrent.

In February, 1987, this office responded to a request by the Committee on Transportation and Land Use to research the feasibility of imposing civil penalties against violators of San Diego's zoning ordinances as another enforcement alternative. The Committee's action on this report is unclear. Apparently, the Committee approved the concept of civil penalties, but no official requests to write such an ordinance were ever received from the Planning Department or Committee Consultant. Attached is a copy of that report which outlines the nature of civil penalties and the three (3) available enforcement techniques mentioned above. A copy of Section 11.16 relating to Summary and Administrative Abatement is separately attached for your reference.

With the establishment of an ordinance allowing for civil penalties, discretion can be exercised in determining the amount of civil penalties to be imposed upon a particular violator. The amount can vary, depending on such factors as: the size of the business, the gravity of violations, prior misconduct, ability to pay, etc.

These penalties could accrue daily against the violator until the violation is corrected. A necessary part of any procedure to assess and impose civil penalties would be an administrative hearing to confirm: 1) the existence of the violation; and 2) the amount of civil penalties to be imposed. In that way due process requirements would be satisfied.

The City Attorney's Office would be most willing to work with this Committee and the various departments in drafting an ordinance which authorizes the imposition of civil penalties upon violators.

Respectfully submitted,  
JOHN W. WITT  
City Attorney

DC:lja:639(x043.1)  
Attachment  
RC-88-35